

PE

OBSERVATIONS
ON THE
PETITIONS OF GRIEVANCE,
ADDRESSED TO THE
IMPERIAL PARLIAMENT,
FROM THE DISTRICTS OF
Quebec, Montreal and Three-Rivers.

QUEBEC:
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OBSERVATIONS, &c.

THE contentions by which a faction has succeeded in disturbing the tranquility of this Province for the last ten years, have at length become the subject of discussion in the Imperial Parliament.—To this point the friends of Government have long and ardently desired to come; Those who knew the principles and instructions by which the conduct of the Provincial Government has been guided, looked forward with certainty to its entire justification, upon such an appeal; and those, who, without having access to the same sources of information, nevertheless reposed just and implicit confidence in the firmness, wisdom and integrity of the Government, felt equally assured of the same result: It is true indeed that the issue of the Parliamentary inquiry into the state of affairs in this Province is not yet known; but it appears,—to the regret of those who wish well to Government and desire to see the designs of faction not only defeated, but exposed,—that the objects of the inquiry, as stated by the Colonial Minister in answer to a distinct question of Mr. S. Wortley, will not embrace the disputes as to the conduct of the Provincial Administration; and it is equally apparent that its measures have received as complete a sanction as the warmest of its supporters could desire, not only in the language of the Colonial Minister himself, but in the testimony of Mr. Stanley, late Under Secretary of State, whose political bias and position give a peculiar weight to his declaration, that the conduct of the Government of the Province, had been in conformity to the instructions it had received.

Under these circumstances, it may seem to some unnecessary to enter into any further justification of the measures of the Provincial Government, or to set about a refutation of the falsehoods and misstatements contained in the Petitions from the three Dis-

tricts of this Province which have now been laid before the Imperial Parliament, under the pretence that they express the sentiments of 87,000 inhabitants of this country ; But though it is now well known by what artifices and frauds the ignorant and uninformed peasantry of the Province were cheated into an apparent acquiescence in these complaints, and though the whole mass of misrepresentation by which they were deluded, is likely to meet a fate which its fabricators little expected, from the tribunal before which they have gone, it is still desirable that the friends of Government should know by particular proofs, so far as the vague nature of the allegations will admit of proof, how totally destitute the accusations against it are, not only of reasonable foundation, but of any semblance of truth in point of fact : It is desirable that those who have honorably supported the cause of Government, rather from a general but liberal confidence in it, and from a conviction of the factious designs of those who opposed its measures, than from any intimate knowledge of the grounds and reasons of those measures, should have the satisfaction of knowing that such sufficient grounds and reasons were not wanting ; that their confidence has not been misplaced ; and that the injustice done to Government by the charges with which these Petitions are filled, is even greater than they had themselves supposed.

In going through these accusations, a marked difference is to be observed between the petition sent from the District of Quebec, and that framed at Montreal, and adopted in the District of Three Rivers : The former assails the general conduct of the administration of the Province, during the last thirty years, and deals out its charges and insidious insinuations with an affected moderation of language : The Montreal Petition, going more boldly and directly to the main object of the factious party by whom it was composed and supported, sets out with direct accusations against the present Head of the Government, the passion and virulence of which are only exceeded by their falsehood ; These charges might be treated as in every sentence and assertion utterly absurd and unfounded, and be passed over in contempt as unworthy of other reply, than that the King's Representative has had the approval of those to whom alone he is responsible ; But, that no part of this document may pass without its due notice, the several clauses shall be taken in order, and a distinct and concise answer given on such points as are susceptible of it, or a general and broad denegation to its vague and undefined assertions :

The preamble is entitled to respect as altogether dutifully, humbly and properly expressed towards His Majesty.

“ Nous venons déposer à vos pieds nos justes plaintes contre
 “ Son Excellence George Comte de Dalhousie. Chargé par vous-
 “ même de vous représenter dans notre Colonie, et de nous faire
 “ éprouver les bienfaits du Gouvernement de Votre Majesté, il
 “ s'en faut de beaucoup qu'il ait rempli la haute mission dont
 “ vous l'aviez gracieusement chargé pour le bonheur de vos fi-
 “ dèles Sujets Canadiens.”

This is a general charge of which His Majesty, and not a faction must be the Judge. In itself unintelligible, uncertain and unworthy of attention, without a distinct specification of facts, it is sufficiently refuted by the declarations of His Majesty's Minister in Parliament, as to the conduct of the Provincial administration.

“ Il a, pendant son administration, commis différents actes
 “ arbitraires, tendant à aliéner l'affection des fidèles sujets de
 “ Votre Majesté, et subversifs du Gouvernement tel qu'établi par
 “ la loi dans cette Province.”

This also is a vague and general allegation, not susceptible of any other answer than a general denial. The Government has been guided in all its acts, by the laws existing; by his Majesty's commission to the Governor in Chief; by the Royal Instructions that accompanied it; by subsequent instructions received at various times and in various dispatches; by the advice of His Majesty's Executive Council; and by the indispensable necessities of the public service.

“ Il a, par warrant ou autrement, tiré des mains du Receveur-
 “ Général de cette Province, des sommes considérables sans y
 “ être autorisé par la loi.”

The Governor has paid all sums authorized by law; He has at the regular and ordinary periods paid the salaries of all public functionaries appointed in the offices of the Civil Government, and sanctioned by the Legislature, before he assumed the Government. To these none have been added without His Majesty's commands or sanction obtained. The ordinary contingent expences of these public offices have also been paid, according to the exigencies of the service, but not until the accounts have

passed through the usual course of examination and audit, by those to whom that duty is entrusted under His Majesty's instructions.

Beyond these salaries and services, nothing has been paid which has not been duly and fully accounted for; and every payment, of every description, that has been made out of the Provincial revenues, has been annually laid before the Legislature.

"Il a, volontairement et méchamment, tronqué, supprimé, gardé par-devers lui, et soustrait à la connaissance du Parlement Provincial, divers documens, et papiers publics nécessaires à la dépêche des affaires et au bon Gouvernement de cette Province, et ce, au grand détriment du service public et au grand préjudice des Sujets de Votre Majesté en la dite Province."

A base falsehood.

"Il a volontairement et en violation de son devoir envers son Souverain et ses fidèles sujets en cette Province conservé dans l'exercice de ses fonctions, John Caldwell, Ecuyer, ci-devant Receveur-Général, entre les mains duquel le revenu public de cette Province était versé, en vertu de la loi et des instructions royales, longtems après que ce fonctionnaire public avait avoué sa malversation et déclaré son incapacité de satisfaire aux demandes faites contre lui pour le service public : et ce, au grand détriment des habitants de cette Province, et au grand préjudice du service et de la foi publique."

Utterly untrue, and at variance with public and well known facts. The late Receiver General first "declared his incapacity" to meet the public demands upon him, on the 12th August, 1823. On the 14th August the receipts of the public revenue payable by law into his hands were put under the control of two persons, one a member of the Executive Council and one a member of the Assembly, without whose order no monies could be received or paid by him. This arrangement was to be continued until an answer should be received to a reference, made in the month of April preceding, by the Governor in Chief to His Majesty's Government in England, respecting the finances of the Province. That answer not having been received before the Legislature met, (on the 24th of November) Mr. Caldwell was formally suspended on the 23d November, as he had virtually been before; and the Accounts of the special Commissioners, appointed to check his

receipts and payments from August to that period, were immediately laid before the Legislature, and have never been in any respect objected to.

“ Il a en opposition à la pratique constante du Gouvernement de Votre Majesté, et en violation de son devoir comme administrateur du Gouvernement de cette Province, nommé John Hale, Ecuyer, pour remplacer le dit John Caldwell, comme Receveur-Général, sans exiger ni requérir de lui les sûretés ordinaires requises pour assurer la due exécution des devoirs de cette place.”

The Governor in Chief appointed Mr. Hale to act as Receiver General until the further pleasure of His Majesty's Government should be known. The Governor in Chief's Commission restricted him from making any other than this temporary appointment; it was regularly reported to His Majesty's Government for confirmation, and Mr. Hale immediately offered his securities to the Lords of His Majesty's Treasury, of which the Assembly were informed by the testimony of Mr. Coltman, on his examination before their Special Committee, on the 4th March, 1825; But Mr. Hale's appointment has not yet been confirmed, although His Majesty's Government has been informed, that until such confirmation be received, it was not thought right to call upon Mr. Hale to give the security which the Treasury requires of an officer holding the situation of Receiver General. This also has been stated, without disguise, to the Assembly in the Governor's message of the 9th February, 1827.

“ Il s'est en différens tems servi de son autorité comme Commandant en Chef, pour influencer et intimider les habitans de cette Province dans l'exercice de leurs droits civils et politiques.”

It is impossible to discover to what this charge alludes; and no distinct answer can be given to it, other than a general denial.

“ Il a comme Commandant en Chef renvoyé et disgracié un grand nombre d'Officiers de Milice dans la Province, sans cause juste ou raison suffisante.”

The Governor in Chief has not dismissed any Officers of Militia, “ without sufficient cause.” But he has found it necessary to dismiss several, who have in various respects failed in their duties, by careless neglect of prisoners committed to their charge,

as Peace Officers of the country ; by making false or illusory returns ; by insolence or insubordination towards their superior officers ;—by actual disobedience of the laws—or by actively fomenting discontent and lending themselves to acts which it was their duty to have suppressed.

“ Il a sans cause ou raison suffisante, arbitrairement et despotiquement, renvoyé et privé, plusieurs Officiers civils des places de confiance et de responsabilité qu’ils occupaient, et ce, au préjudice de ces Officiers et du service public.”

The Governor in Chief has dismissed four Officers of the Civil Government within seven years, for whose removal abundant cause can be shown, and sufficient proof will be forthcoming, when necessary. In the mean time it may be asked whether any one of these individuals has ever thought it expedient to seek redress, by submitting his case in the usual way to His Majesty's Government.

“ Il a maintenu et conservé, conserve et maintient en place, plusieurs fonctionnaires publics, après qu’il a été prouvé que leur nomination à telles places, ou que leur conduite dans l’exercice de leurs fonctions était préjudiciable au service de Votre Majesté et aux intérêts de ses Sujets dans cette Province.”

Vague, unintelligible and totally false.

“ Il a multiplié dans des tems de tranquillité, et sans aucune nécessité, des Cours Spéciales d’Oyer et Terminer, outre les termes réguliers et ordinaires des Cours Criminelles établies par la loi, imposant par là un fardeau considérable aux Sujets de votre Majesté, et une dépense énorme à la Province.”

The Governor in Chief has issued such Special Commissions for the delivery of the Gaols and the trial of criminal offences, when they were in the regular manner reported to him to be necessary for the due and proper administration of Justice in the Province. The crowded state of the Gaols when those Commissions were issued was of itself sufficient proof of their necessity ; and that necessity became the more urgent, in consequence of the expiration (on 1st May 1827) of an act passed by the Legislature in 1823, adding five days to the Criminal Terms at Montreal, which had been found too short for the increasing number of criminal cases.

" Il a, par des prorogations et dissolutions subites et violentes
 " du Parlement Provincial, nui aux intérêts publics de cette Pro-
 " vince, retardé ses progrès, empêché la passation d'actes utiles :
 " Il a dans ses discours lors de telles prorogations, faussement ac-
 " cusé les représentans du peuple, afin de les décrier dans l'opinion
 " de leur constituans et dans la vue de créer auprès du Gouverne-
 " ment de Votre Majesté des préjugés défavorables à la loyauté et
 " au caractère des Sujets Canadiens de Votre Majesté : Il a toléré et
 " permis que les Gazettes du Gouvernement publiées sous son au-
 " torité ou sous son contrôle portassent journellement les accusa-
 " tions les plus fausses et les plus calomnieuses contre la Chambre
 " d'Assemblée, ainsi que contre tout le peuple de cette Province."

This allegation comprises various matters;—The Governor has
 exercised the Royal Prerogative, once by dissolution, and at other
 times by prorogation, either in obedience to instructions which
 he has received from His Majesty's Government, or upon the ad-
 vice of His Majesty's Executive Council; and as he himself
 judged it to be necessary for the public interests.

In his language to the Legislature, he has spoken his sentiments
 openly and fearlessly to the country, and has felt it to be his
 public duty, though a painful one, to tell unacceptable
 truths without regarding whom they offended; and his con-
 duct in this respect has been uniformly reported in the usual
 manner to His Majesty's Government. It is not true that the
 Governor in Chief has, ever, in any manner, interfered with
 public Newspapers, except that he would not permit the Quebec
 and Montreal Gazettes, which circulated through the country
 with the character and influence of Government papers, to be, at
 once, the organs of public notifications from his Majesty's Pro-
 vincial Government, and the propagators of false accusations
 against it. He therefore appointed a fit and competent person to
 print and publish the Quebec Gazette, in which certain official
 notifications and acts of Government must by law be inserted,
 and he in like manner at the request of the parties interested in
 a newspaper at Montreal, commissioned a person as King's
 Printer at that place.

With the management, conduct or language of these Journals
 the Governor in Chief has never, either directly or indirectly, in-
 terfered.

“ Il a par le même moyen menacé le Pays d'exercer la Prérogative Royale d'une manière violente, despotique et désastreuse, c'est-à-dire, de dissoudre continuellement, ou selon l'expression insultante de ces menaces, de chasser le corps représentatif jusqu'à ce que les francs-tenanciers et les propriétaires se vissent obligés de choisir pour Représentans, non plus ceux qui auraient leur confiance, mais ceux qui seraient disposés à tout accorder à l'Exécutif et à lui sacrifier le droit qu'a le peuple de cette Province, agissant par ses Représentans, de déterminer quelle somme des deniers publics l'administration aura le droit de dépenser, et d'assurer l'emploi fidèle de ces deniers ; ou bien qu'il punirait la Province en rejetant les bills passés par les Représentans du peuple pour l'avantage général, jusqu'à ce qu'il abandonnassent le droit de fixer et de contrôler la dépense ; et que les Magistrats et les Juges du Pays seraient aussi bien que les bas Officiers, destitués des hautes et importantes places qu'ils occupent, et qui, dans l'intérêt public comme dans l'intérêt des particuliers, exigent l'indépendance et l'impartialité la plus absolue, s'ils n'étoient pas agréables à la présente administration.”

This again relates to the language of the Newspapers mentioned in the last clause,—and the same answer is to be given to it.

“ Il a, conformément à la politique vindicative ainsi avouée par les écrivains par lui employés, puni en effet le Pays, en ne donnant point la sanction Royale à cinq Bills d'appropriation pour aider les progrès et l'amélioration du Pays en 1826, auxquels Sa Majesté a bien voulu depuis donner sa sanction, et en permettant à ses Conseillers Exécutifs et autres personnes sous son contrôle et possédant des places durant plaisir, de se servir de leur prépondérance dans le Conseil Législatif dont ils sont aussi membres, pour supporter cette politique vindicative et rejeter en 1827, tous les Bills d'appropriation pour l'avancement de la Province et pour des objets de charité qui avaient été passés annuellement depuis un grand nombre d'années.”

The Commission of the Governor in Chief vests him with the power of reserving Bills for His Majesty's consideration.—His reasons for reserving those here alluded to, were stated to His Majesty's Government. In 1827, the Governor in Chief obeyed strictly the instructions he had received for his guidance in that Session of the Legislature.

The Legislative Council suspended several money bills for special services in that session, and they were fully justified in doing so, upon the principle that local or special appropriations should be delayed until the necessary supply for the general wants of Government was ascertained and passed;—but no such Bill of Supply reached that House before the prorogation.

“ Il a violé la franchise électorale des habitants de cette Province, en essayant directement et indirectement d’influer sur l’élection des Membres de la Chambre d’Assemblée de cette Province.”

A malignant falsehood.—It is well known that neither directly nor indirectly has the Governor in Chief influenced, or attempted to influence a single vote at any election, during the whole period of his administration.—But on the contrary, in one instance last summer he made known to the military persons having votes in Quebec, his wish that they would not vote in the then contested Election,—though it was well understood that their votes, if given at all, would be for a candidate whose sentiments were supposed to be in favor of the Government upon the main points at issue.

“ Il a enfin, par tous ces divers actes d’oppression, créé dans tout le Pays un sentiment d’alarme et de mécontentement, déprécié l’autorité du pouvoir judiciaire dans l’opinion publique, affaibli la confiance du peuple dans l’administration de la Justice et inspiré dans toute la Province un sentiment insurmontable de méfiance, de soupçon et de dégoût contre son administration.”

This is a general charge founded on all the rest, and falling with them;—each assertion it contains is wholly and without measure false, and the effects, if they were true, which it attributes to the conduct of the Executive Government, must be ascribed wholly and exclusively to the faction by whose influence this Petition to His Majesty has been produced.

Of the remaining clauses of this paper, some concern more particularly the general policy of His Majesty’s Government and the measures of the Imperial Parliament;—others relate to the constitution of the Legislative Council, and to measures which have been matters of discussion, between the two deliberative and independent branches of the Provincial Legislature, but on which

they have not agreed. As, however, these various points are brought forward in the Petition from Quebec more in detail, they will pass under review in their proper place in the examination of that document;—and we now address ourselves therefore to the task of examining—

THE PETITION FROM THE DISTRICT OF QUEBEC :

“ Among the numerous benefits for which the Inhabitants of Lower-Canada are indebted to Your Majesty’s Government, there is none that they more highly prize, than the invaluable Constitution granted to this Province by the Act of the Parliament of Great Britain, passed in the thirty-first year of the Reign of Our beloved Sovereign, Your August Father of ever revered memory.

“ Called by that Act to the full enjoyment of British constitutional liberty, and become the depositaries of our own rights under the protection of the Mother Country, we contracted the solemn obligation of preserving inviolate this sacred deposit, and transmitting it to our descendants, such as it was confided to us by the great men who then presided over the destinies of Your powerful and glorious Empire.

“ Deeply impressed with a sense of this obligation, alarmed by the abuses which have crept into the Administration of the Government of this Province, and suffering under the evils which weigh on its Inhabitants, we entertained an anxious hope that the House of Assembly in the Session of the Provincial Parliament, called for the Dispatch of Business on the twentieth of November last, would take into consideration the state of the Province, and adopt efficacious measures to obtain the remedy and removal of these abuses and evils. We had a sure reliance on the well-tryed loyalty and disinterested zeal of our Representatives, but we have had the mortification of seeing our hopes frustrated by the refusal on the part of His Excellency the Governor in Chief to approve the Speaker elected by the Assembly, and by the Proclamation of the twenty-second of the same month of November, Proroguing the Provincial Parliament. In these circumstances, deprived of the services of our Representatives, suffering under great evils, and threatened with others still greater, we humbly implore the protection of Your Majesty, the source of all grace and of all justice.”

The “ evils that weighed on the Inhabitants of the Province,” were indeed deeply felt by all moderate and reflecting men, but

they were also deeply sensible that these evils were to be traced, 'not to the abuses that had crept into the administration of the Government,' but to the reckless and intemperate spirit that had long actuated the leading Members of the body, chosen as the representatives of the people.

No one therefore who was acquainted with the real condition of the country, looked to that body with the slightest hope of a remedy to these admitted evils: that remedy was not expected to be found in the very seat of the disease; and before the Assembly met, it was well known, and ascertained, that the leaders of the predominant party had prepared articles of accusation against the head of the Government, which were to engage the first attention of that House, after the opening of the Session, and would therefore have led to an immediate rupture with the other branches of the Legislature. This fact must be taken as explaining the nature of the "efficacious measures" which the Assembly were to have adopted, "to obtain the remedy and removal of the abuses and evils" referred to in the preamble of this Petition.

This highly remedial course of proceeding was indeed prevented by the interruption of the Session, in consequence, not of the refusal of the Speaker, but of the persistence of the Assembly in the unconstitutional and unheard of pretension, that they had in themselves the right to *appoint* their Speaker, without the approbation of the Crown; the rejection of the person whom they chose was not only maintainable on every ground of constitutional law and usage, and of the extreme unfitness of that person, as the violent leader of a violent party, but it became the indispensable duty of the Governor, with reference to the measures he was charged to lay before the Assembly,—measures for the failure of which he would justly have been answerable to His Sovereign, if that failure could in any degree be attributed to his admitting to the office of Speaker, a man possessing such a party influence in the Assembly and *publicly pledged* to use his influence to the utmost against those measures.

"The enlightened and patriotic Statesmen who devised our Constitutional Act, and the British Parliament by which it was granted, intended to bestow on us a mixed Government, modelled on the Constitution of the Parent State; the opinions publicly expressed at the time in Parliament, and the Act itself, record the beneficent views of the Imperial Legislature; a Governor, a Legislative Council, and an Assembly were to form three distinct and

“ independent branches, representing the King, the Lords, and the Commons; but the true spirit of that fundamental Law has not been observed in the composition of the Legislative Council; for the majority of its Members consisting of persons whose principal resources for the support of themselves and of their families, are the Salaries, Emoluments and Fees derived from offices which they hold during pleasure, they are interested in maintaining and increasing the Salaries, Emoluments and Fees of Public Officers paid by the people, and also in supporting divers abuses favorable to persons holding Offices. The Legislative Council by these means is, in effect, the Executive Power, under a different name, and the Provincial Legislature is, in truth, reduced to two branches, a Governor and an Assembly; leaving the Province without the benefit of the intermediate branch as intended by the aforesaid Act; and from this first and capital abuse, have resulted, and still continue to result, a multitude of abuses, and the impossibility of procuring a remedy.”

This article of grievance contains an attack upon the constitution and the independence of the Legislative Council, and upon the undoubted prerogative of the Crown in the appointment of the Members of that body.

The complaints are that the Majority of the Legislative Council is composed of persons holding Office, and therefore not only under the direct influence of the Executive Government, but interested in the maintenance and increase of the emoluments of other Officers, and in the support of abuses favorable to them.

Whatever may have been the theoretical views of the enlightened Statesmen who, in 1791, framed the Constitution of this Province, as to the composition of the Legislative Council, it is certain that the circumstances of the Country, (if indeed those circumstances were fully known to them) have since that period totally changed; The race of well educated and high principled Gentlemen who were then looked upon as forming the *Noblesse* of Canada, have become almost wholly extinct; their Estates have passed, (sold or subdivided) into other hands; and they have been in many cases succeeded by Men scarcely raised in intellect, information, influence or respectability above the condition of the peasantry of the Country; a Legislative Council formed of such materials would bear but a wretched resemblance to its type in the Constitution of the Mother Country; It could afford no counterpoise to the increasing weight of the popular branch, with which it would on the contrary

have a perpetual tendency to amalgamate and combine ; It would then indeed cease to form a third branch of the Constitution, and the influence which it is now untruly said that the Executive Government exercises over it, would if such were its formation, be invariably exerted by the active and encroaching spirit of the Lower House.

This is the true object and real meaning of these complaints against the Constitution of the Legislative Council.

The objections brought forward both in this Petition and in the latter part of that from the District of Montreal, to the introduction of the Judges and higher Officers of Government into the Legislative Council, whatever foundation they may have in theory and speculation have not been acted upon in any Colony, and may be held to be inconsistent with expediency, practical wisdom and experience : If honorary distinctions are not to be conferred upon the servants of the Crown and of the Public, the public service will cease to be an object of honorable pursuit and ambition ; liberal men will not seek it unless they may view it as the road to eminence and distinction.

Besides this, however, the frame and condition of Colonial society, particularly in Lower-Canada, do not admit of the selection of a sufficient number of persons, independent of Government and possessing the requisite intelligence, education, knowledge and leisure to become useful and effective Members of a Legislative Council :—the Members of that body who hold no Office under Government, cannot be depended upon, as the Journals of the last fifteen years will shew, for regular attendance ; and without the assistance of those Members who are Officers of Government, the Legislative Council would often find it difficult to carry on the public business : They would find it still more difficult without the assistance of two or three Men of legal and judicial experience to consider and mature the many important measures which are brought before them, for the improvement of the existing complicated code of laws, and of the administration of justice :—It is indeed a known fact that measures of this nature have been delayed in that body in consequence of the absence of the Judges and the inability of the other Members to discuss or mature them.—To this it may be added, that a seat in the Legislative Council, is a suitable distinction to be granted to the Judges, it gives them their proper weight in the Government of the Country, and that dignified station in Society to which they have an undeniable

claim, and which, in Lower Canada, more particularly than in any other Colony, it is consistent with good policy to confer upon them. The introduction of Judges into the Executive Council, may, indeed, be open to more weighty objections ; but it has been the invariable policy of the Government of the parent state to place, at least, one of the Judges of each Colony in the Council of the Governor : In this Province there are but two Judges in the Executive Council, the Chief Justice being always one *ex officio*, and a second being necessary in case of the absence or sickness of the other. It is unnecessary to state the obvious reasons which make it essential to the public interests that a proportion of the Executive Council should be members also of the Legislative Council ; But upon the whole of this part of the subject it is worthy of remark how studiously the advocates of the exclusion of the Judges and other public functionaries from the public councils, keep out of sight that in the mother country, under that constitution to which this article of complaint refers as the model of that of Lower-Canada, the Lord Chancellor presides in the House of Lords and holds a seat in the Cabinet, and that others of the Judges and great functionaries of the State are placed in the Upper House, and are among its most active, useful and influential members.

With respect to the share which the existing administration has had in the present formation of the Legislative Council, it is sufficient to say that out of seven Members who have been added to that body since the year 1820, *five* were persons unconnected with the Executive Government at the time of their appointment, and only one of these has since been placed in an office of profit or public trust by the Colonial Government.

If former administrations are referred to, it will be found that these complaints against the conduct of the Colonial Government, are with respect to them equally devoid of foundation ; — Of twenty members who had been raised to the Legislative Council in the course of eight years prior to 1820, (comprising the administrations of Sir George Prevost and Sir John Sherbrooke,) the majority (though not in so great a proportion as during the last eight years) were persons wholly independent of Government.

Again, looking at the actual state of facts as to the present composition of the Legislative Council, it is a gross misrepresentation to state that the "majority of the body consists of Officers of Government," for of Twenty-eight Members of which it consists, fif-

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teen are persons holding no situations under Government, unless indeed that number be reduced to fourteen by the circumstance of one of the Members receiving the half pay of a Commission in a Fencible Corps, reduced thirty years ago,—a circumstance which is not supposed to have had much weight either on his opinions or his conduct.

It is indeed true that several of these Members have for some years absented themselves from their places in the body to which they belong,—some withheld by their age and infirmities, others by their own choice;—but it cannot be maintained that the Government is in any way responsible for the deficiencies in the composition of the Legislative Council arising from such causes.

Such are the facts relating to the Constitution of the Legislative Council; nothing more is necessary to shew the utter futility and falsehood of the accusations brought against the Colonial Government in this respect:—But it is not unimportant to add, that the insidious inferences attempted to be drawn from the misrepresentation of the Petition on this subject, against the independence of the Legislative Council, are practically refuted by circumstances within the knowledge of every man at all conversant with the proceedings of the Legislature:—For it is notorious that the Legislative Council, although it has constantly resisted the encroachments and unconstitutional conduct of the assembly, has more than once, during the last fifteen years withstood and thrown out measures supposed to be acceptable to the Colonial Government; and on various occasions, Members of the Executive Council and Officers of the Government have been seen dividing against each other, in that body, on Bills which the Executive Government approved or disapproved.

The insinuation against the Legislative Council, that they have from interested motives, made common cause with the Officers of Government in maintaining profitable abuses, deserves no other answer than this, that as it is unsupported, (and incapable of being supported) by one single instance of proof, it can only be viewed as an insidious and disingenuous attempt to vilify an independent branch of the Legislature for having stedfastly resisted the factious party in the Lower House by whom these accusations are now promoted and brought; It manifests the determination of that party to exact the unqualified submission of the other branches of the Legislature; to admit no independence but in their own body, and a dependance of all others upon that; and to

maintain in reality and substance, though not in words, that what they enact shall be the law, and what they shall pronounce to be an abuse and a grievance, must be allowed to be so, and be remedied by the other branches under pain of being held up to obloquy and public execration as the abettors of abuses, speculation and oppression.

“ We acknowledge that the Legislative Council ought to be independent, and if it were, we should not be entitled to complain to Your Majesty of the repeated refusals of that branch to proceed upon various Bills sent up by the Assembly, howsoever useful and even indispensable they might be; but considering these refusals as the natural result of the composition of that body, and of the state of dependence in which the majority of its Members are placed, we are compelled to consider its acts as the acts of the Executive Government; and we most humbly represent to your Majesty, that the Legislative Council of this Province, the majority of which is composed of Executive Councillors, Judges and other persons dependent on the Executive, have, year after year, rejected several Bills, refused and neglected to proceed on several other Bills sent up by the Assembly, for the remedy of abuses, for encouraging Education, promoting the general convenience of the Subject, the improvement of the Country, for increasing the security of persons and property, and furthering the common welfare and prosperity of the Province; particularly :—

“ Various annual Bills granting the necessary sums for all the Expenses of the Civil Government of the Province, but regulating and setting limits to the Expenditure.

“ For affording a legal recourse to the Subject having claims against the Provincial Government.

“ For regulating certain Fees and Offices.

“ For enabling the Inhabitants of the Towns to have a voice in the management of their local concerns, and a check on the expenditure of monies levied upon them by assessment.

“ For facilitating the administration of Justice throughout the Province, for qualifying and regulating the formation of Juries, and introducing Jury trials in the Country parts, and diminishing the expenses occasioned by the distance of suitors from the present seats of Justice.

" For providing a new and sufficient Gaol for the District of Montreal.

" For qualifying persons to serve in the Office of Justice of the Peace.

" For continuing the Acts regulating the Militia of the Province.

" For encreasing and apportioning the Representation in the House of Assembly equally among the qualified Electors throughout the Province, particularly in the new Settlements and Townships.

" For the security of the Public Monies in the hands of His Majesty's Receiver General in this Province.

" For the independence of the Judges, by securing to them their present Salaries, upon their being commissioned during good behaviour, and for providing a Tribunal for the Trial of Impeachments by the Assembly, so as to ensure a just responsibility in high public officers within the Province.

" For appointing and providing for an authorized Agent for the Province, to reside in England, and attend to its interests there."

Whatever may be the defects in the composition of the Legislative Council,—the assertion that the Acts of that body, particularly in the rejection of certain Bills, must be taken to be the Acts of the Executive Government,—is sufficiently rebutted by the single fact, that high Officers of Government,—and members of the Executive Council have, as has been before observed, voted for some of those Bills in the Legislative Council.

In truth the whole of this allegation as to the proceedings of that body, is a further attack upon their independence; and its true meaning is, not that the Executive Government of the Province has practically exerted any influence over those proceedings,—but that, having placed a certain number of public officers and functionaries in the Legislative Council, to act there upon their oaths, it is to blame for *not* having interfered with their consciences and judgments, to induce them to acquiesce in the

measures of the Assembly : The vagueness of this charge is indeed alone a sufficient evidence of its weakness and futility ;— But it will appear still more unworthy of attention, when the particular instances are considered, in which it is pretended that the obstinacy of the Legislative Council, influenced by the Executive Government, has rendered abortive the wisdom of the Assembly :—If it were possible within any moderate compass, to exhibit the errors, the inconsistencies, the wild and impracticable notions, the crude, negligent and blundering attempts at Legislation that are to be found in the various Bills of the Assembly which the Legislative Council are more particularly charged with having rejected, it would excite the amazement and the ridicule of every reasonable man that such a subject should be brought forward seriously as a matter of complaint.

The first instance specified under this head of complaint relates to the various annual Bills of Supply rejected in the Legislative Council :—It is unnecessary to enter particularly into this subject of dispute between the two bodies ; Its history and present state are well known ;—The Assembly pretend to the right of controlling the application of the whole revenue, as well that which is already appropriated and placed at the disposal of the Crown, as that which is unappropriated ;—and they further pretend that this control is to be exercised by their passing Annual votes on every item of the whole Provincial expenditure ;—The Legislative Council have uniformly resisted these pretensions : and His Majesty's Government have instructed the Provincial Government not to admit them :—It is for that resistance that the conduct of the Legislative Council and the Executive Government, is now called into question, and for that resistance they are triumphantly justified by the principles laid down by the Colonial Minister in his late speech in the House of Commons.

The Bill “for affording a legal recourse to the subject having claims against the Provincial Government”—had for its object to give to the Courts of Law in this Province, a jurisdiction over the property and officers of the Crown, somewhat analogous to that which is exercised in the Courts of Chancery or of Exchequer in England, upon *Petition of right* or *monstrans de droit*. The Legislative Council have repeatedly deliberated upon this Bill and rejected it ;—It is probable that

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they entertained an opinion that no case had been made out shewing the necessity of such a measure :—that as far as regards the property or transactions of the Crown with the people in Civil matters, the subject possesses in the Colonies an equally remedial and equitable course by a Petition to the Government, acting by the advice of its Law Officers, and of its Executive Council,—the same body before which, as an appellate tribunal, the legal proceedings that this Bill goes to establish, would in almost all important cases be brought ; and as to matters connected with the Military Service and property of the Crown, the Legislative Council may have considered it unadvisable to establish a course of proceeding which might lead to an inconvenient interference with those regulations for the conduct and responsibility of the Military servants of the Crown, and the management of its military property and finances, to which they are now subject, and which might in the time of war be especially necessary to the public safety.

It is not easy to ascertain what were the “ Bills for regulating certain fees and offices,” which the Legislative Council rejected, unless allusion be made to a Bill passed by the Assembly in 1824, for checking certain supposed abuses in the exaction of fees, on the granting of Lands ; and to another Bill for reducing the fees of the Clerk of the Market ;—Of the former it is sufficient to say, that after being once rejected in the Legislative Council, it has not since been brought forward by the member who introduced it, and the total change that has taken place in the system of Land granting has done away with the fees at which it is supposed to have been aimed ;—And the latter Bill was an attempt to set aside, by a temporary act, a police regulation of a useful nature, existing under a permanent law, and this without establishing the existence of improper or excessive fees by any satisfactory evidence whatever.

The Bills for *incorporating the towns* were rejected in the Legislative Council for various reasons, arising both from their principle and detail ; That for Montreal was considered by many well-judging men, acquainted with *local circumstances*, as a manifest scheme for increasing and perpetuating a family and party influence in that City, by throwing the election of Magistrates and the management of the local funds into the hands, ostensibly, of a herd of petty voters,—but, really, of a few City demagogues, who would thus have a sure means of influencing at all times the election of members, to serve in the Assembly.

It is not intended however to allege that this consideration weighed with the Legislative Council in rejecting the measure ; and there is no reason to doubt that Bills for incorporating the two principal Cities would pass that body with little difficulty if framed upon proper principles.

The rejection by the Legislative Council of Bills " for facilitating the administration of Justice," is not the least extraordinary of these singular grounds of accusation against the proceedings of that branch of the Legislature :—

The first Bill of this nature that came under the consideration of the two branches, was in 1819, when a Bill was sent down *from the Legislative Council* to the Assembly, but *was never proceeded upon there* :—

The next Bill was sent *from the same body*, to the Assembly in 1821, but the only notice taken of it in that House, was a report of a Special Committee made after five weeks consideration, *stating reasons why they could not then proceed on it* :

The next Judicature Bill was also sent *from the Legislative Council* to the Assembly on the 24th Dec. 1823 ;—after being two months under consideration there, a Special Committee reported amendments, *which were never taken into consideration by the House* :

In 1825, for the first time the Assembly sent up a Judicature Bill, late in the session, (9th March) to the Legislative Council, who immediately proceeded to consider and amend it ; but on the 22d, and before they could go through the Bill, the Lieutenant Governor prorogued the House :

In 1826, after five weeks discussion in the Assembly, another Bill of the same nature was sent up by them to the Legislative Council, was discussed for three weeks in that body, and so largely amended, that it became necessary (on the day before the prorogation) to order it to be printed for the use of the Members.

In 1827, the Assembly, five weeks after the opening of the Session, and a few days before the prorogation, again sent up their Judicature Bill of the year before, without adopting any of the amendments proposed in the Legislative Council :—It

passed however to a second reading in that body in a few days, but their proceedings were interrupted by the prorogation.

It is unnecessary to say one word more to expose this false and frivolous accusation against the Legislative Council, of having rejected or neglected the Bills sent up by the Assembly on this important subject:—It is equally unnecessary to advert to the nature of the provisions of those Bills; further than to state that they were in reality, but one and the same measure, framed principally by one and the same individual in the Assembly; and that while they were studiously devised to catch popularity by establishing an elaborate but cumbrous system for the administration of Justice in smaller matters at the doors of the people, they left untouched the main evil of the present system of judicature, in not providing a sufficient tribunal to give certainty and uniformity to the jurisprudence of the Colony, which,—not possessing like the legal institutions of other Countries, the perpetual corrective of a body of living expounders of the same code in the parent state, requires more especially, an able and permanent appellate tribunal within the Province.

The Bill “for providing a New Gaol at Montreal” was assuredly not rejected in the Legislative Council, out of any deference to the wishes of the Executive Government, which it is supposed would have sanctioned it, had it passed that body, since in the Session of 1826, it referred to the Assembly, the choice of the plans and estimates for this work, which had been obtained under an Act passed the year before: The object of this Bill was to take a large sum of money from the public Revenue for a merely local purpose, and it was contended in the Legislative Council, that the time was now come, when this system, always faulty, and too long pursued, should be abandoned; and that local assessment should, as in England, be substituted in its place, particularly in the rich and populous District of Montreal; and this view of the subject is strengthened, not only by the precedent afforded by the Assembly themselves in the instance of the Gaol in the new district of St. Francis, which they provided for by local taxes; but by the following resolutions of the Special Committee of the Assembly in 1825, on the erection of this Gaol at Montreal:—viz.

“That the new Gaol ought to be erected as soon as possible,
“and at the expense of the District of Montreal. Your Com-
“mittee being of opinion that it ought to be adopted, as a gene-

“ral principle, founded on economy and equity, that the *expenditure for local matters ought to be defrayed by local means.*”

“That among other ways and means, that of imposing a tax upon judicial proceedings in the District of Montreal ought to be adopted;—the annual income of which would furnish a considerable sum, and which experience has heretofore shewn to be of such a nature, as to admit of being levied without much inconvenience to the District.”

It is true, however, that these resolutions were not adopted by the House, and it is equally true that a majority of the Members of the same Special Committee, which, in 1825, recommended this mode of providing for the building of the Gaol,—in 1826, joined the majority of the House in rejecting their own proposition, and voted for a Resolution that “*the Gaol at Montreal ought to be built at the expense of the Province.*”

The Bill requiring of persons to be appointed Justices of the Peace, a qualification of £100 per annum of freehold estate, was wholly unsuited to the state of the country: It would have excluded intelligent men of monied property or independent incomes, and particularly mercantile gentlemen in the towns, from the Commission of the Peace; and would have substituted for them a half educated class of thriving notaries and small householders and farmers, who might be ready to swear themselves worth £100 a year:—And it would thus have promoted an object which certain individuals in the Assembly keep steadily in view,—the placing Civil power and the authority of the State in the hands of persons sufficiently raised above the lower orders, to be useful instruments in misleading them, but not sufficiently distinguished from them either by possessions or education to become political leaders themselves.

The consequence of this measure would have been, that the Country Parishes, in which it is even now extremely difficult to find persons qualified for this important duty, must either have been left wholly unprovided, or have been subjected to the errors and the ignorance of men, who might, without fear of contradiction declare themselves possessed of £100 a year, though destitute of the first rudiments of education.

With respect to the alleged rejection of the Militia Act, it is only necessary to say, that four days before the prorogation in 1827,

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the Legislative Council amended and returned the Bill sent up from the Assembly, and that it never came back ;—The amendment was undoubtedly in a money clause,—but that clause was never before introduced into the temporary Bills for continuing from time to time the Militia Laws ; it deprived the Government of the means of paying the Militia Staff for a certain period, and was in all respects improperly introduced into the Bill, and contrary to the King's Instructions as being at variance with its title : This being the case, and the conduct of the Assembly having been such as to compel the Governor, in compliance with his Instructions, to prorogue the Legislature immediately, the loss of this Bill is rightly attributable, (as by the Governor's Speech it was attributed) to the "course of proceedings," pursued by the Assembly ;

The Bill for increasing the Representation of the Province, has been often before the Legislature of the Province, and so far from being framed as the description of it in this Petition would lead the world to suppose, for the purpose "*of equally apportioning the Representation, particularly in the New Settlements and Townships in the Province,*" its manifest object was to defeat that desirable end.

It was opposed in the Legislative Council, partly on the ground that no increase of the Representation had ever been recommended by the Crown, nor any thing more than a new and better division of Counties, and that so important an innovation on the Constitution established by the Parliament of Great-Britain in 1791, should not be entered upon without such a recommendation ;—other Members resisted it on the ground that the advantages it professed to give to the Townships by an increase of representation were wholly illusory ;—that the Townships, which were wholly uninhabited at the period when the British Parliament assigned fifty Representatives to the inhabitants of the Seigniorial territory of Lower-Canada, were entitled at the present day, by their population of 40,000 souls, to a larger representation, (if, population were adopted as the basis) than this Bill afforded them ; and that looking to their territorial extent and rising importance, which was evidently the consideration that guided the Parliament of the Mother Country in fixing the number of Representatives of the two Provinces in 1791, when Upper-Canada was yet a wilderness, it was manifest that this Bill dealt no such measure to the Townships, and that it had its origin in a determination, (however masked by professions of regard and liberality towards that part of

the Province,) to exclude the inhabitants from any chance of exercising the elective franchise in such a way as should give them their just share of influence in the Legislature.

We now come to the Bill which is described in this Petition under the plausible title of a "Bill for securing the public monies in the hands of the Receiver-General," and which the Legislative Council, always moved by the instigation of the Executive Government have, as it is alleged, repeatedly rejected;—It had other objects however besides those which are thus described; it was framed on the model of an act of the Legislature of Jamaica, and constituted the Members of the Assembly when in Session, or a certain number of them during the recess, a board to receive and audit the accounts of the Receiver-General, who was made amenable to this new authority;—and they were to be invested with power to settle the Accounts of *all the public funds* in his hands,—whether belonging, independently, to the Crown, or to the Province;—All vouchers were to be delivered to this board, and their adjustment of Accounts was to be final; And all this without reference to, or communication with the Executive Government, and without any regard to the clause which by the Royal Instructions must be inserted in all Money Bills, requiring, "that public monies shall be accounted for to the Lords Commissioners of the Treasury in such manner as shall be directed by his Majesty;"—under which clause, and the powers expressly conveyed in the Governor's Commission and Instructions, all public accounts have for thirty years been audited by the Executive Council, assisted by subordinate officers, without the slightest pretext for accusation or complaint.

The history of the Bill "for securing the independence of the Judges" is soon given, and it throws a new light on the objects and pretensions of the Assembly.

In the Session of 1825, while the Governor in Chief was in England, resolutions were passed by the Assembly, purporting that it was desirable to secure the independence of the Judges, and that for this purpose their appointments should be during good behaviour;—that they should be removed from the Executive and Legislative Councils, and prevented from sitting therein;—and that a tribunal for the trial of impeachments should be constituted in the Colony for bringing to justice high official offenders. The connection of the latter part of the measure with the former, did not at first sight appear very clear or very close;—but it is not difficult

to see that it was meant to substitute a new dependence and influence for that which the measure professed to remove ; and to make the Judges subservient to the will of the popular body, by holding over them the fears of impeachment and trial before a tribunal liable to be actuated by party feelings ; and at the same time to lower them in public estimation by depriving them of the only marks of distinction in society which the Crown can bestow in a Colony.

At the very same period, the Governor in Chief, unaware of these proceedings, recommended to His Majesty's Government in England, and obtained their sanction, that the Judges should be placed on the same footing as in England, with respect to their Commissions, as soon as the Assembly should make permanent provision for their Salaries, and *for retiring pensions to them :*

But when this liberal concession, never before made to any Colony, was brought before the Assembly in 1826, instead of receiving it in the spirit in which it was made, they insisted on their resolutions of the year before ; and the Bill which was brought in was framed upon them ;—It affected indeed to grant the judges permanently, the Salaries which they now enjoy, and to provide retiring pensions for them :—but those Salaries and pensions were made payable out of the funds at the disposal of the Crown, which His Majesty might apply and does apply in this manner *without the authority of an Act of the Provincial Legislature*, but which were known to the Assembly to be insufficient for the ordinary and proper charges now borne upon them ;—The clause for trying public officers, impeached by the Assembly, before the Legislative Council, conveyed a power which though once granted to the Legislative Council by His Majesty, would appear to have been greatly modified by the subsequent Instructions communicated to the Legislature, by the Duke of Richmond in 1819, which evidently intended that in all such cases the charges and evidence on both sides, with the answers of the accused, and the reply of the accusers, should be *first* submitted to His Majesty's Government before any solemn trial should be had in the Colony ;—The object of these prudent Instructions clearly was to reserve to His Majesty's Government, the power of deciding, upon a view of such evidence, whether any trial ought to take place ; and thus to protect the public officers in the Colony, against the chance of oppression by the connivance or weakness of a temporizing or timid Governor, who might be overborne by a combination of parties in the other two

branches. But it suited the purpose of the Assembly to overlook these instructions altogether; they referred, in their Resolutions, only to those of 1817, and the Bill even exceeded the authority then conveyed to the Legislative Council, by giving them the power of awarding judgment and sentence.

Looking at this measure, therefore, in all its parts, it will no longer be, if it ever could have been, a matter of wonder that such a Bill should be rejected in the Legislative Council, as a mere mockery and pretence so far as regarded the conferring independence on the Judges:—a thinly veiled Legislative imposture, got up for the purpose of gaining credit for liberality,—of throwing upon the Council the odium of its inevitable rejection,—and at the same time of fixing a stigma upon the Judges and the whole class of public functionaries, whose conduct and designs would naturally be supposed to call for the erection of the new tribunal which the Bill proposed to establish for bringing them to justice.

The Bill for appointing an Agent in England, has during the last fifteen years been repeatedly brought forward and constantly rejected in the Legislative Council;—Whether the Executive Government has always, or at any time, been unfavourable to the measure, is a mere matter of surmise;—It is equally a matter of speculation what the probable good or ill effects of such an appointment might be;—It is certain, however, that the Governor in Chief, in 1826, recommended to the Legislature, the appointment of a Commercial Agent;—It is certain also that in the neighbouring Colonies of Nova Scotia and Upper Canada, the appointment has been discontinued, in consequence of its inutility: The Legislative Council using its discretion has treated the proposition as a party measure, having for its object to establish a separate authority and a course of correspondence with persons or parties in England independent of, or in opposition to the local Government of the Colony; and they have in this view of the Bill rejected it:—It is worthy of remark, however, that two out of three members of that body who in 1826 signed a protest against its rejection, were officers of the Executive Government, and it is not going too far to express a belief, that the measure itself will not be objected to by His Majesty's Government, provided the appointment be either left to the Executive Government, or be jointly made by the three branches of the Legislature. If the object of the Assembly be any other than to employ a politi-

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cal partizan in England through whose means they may at pleasure thwart the views not only of the local Government, but of the Government of the Mother Country, let them adopt one of these two modes of appointing an Agent; Let them agree that he shall act under instructions from the Government of the Province, as well as from the Assembly; and the Legislative Council will probably view such a measure more favourably:—But such a measure never has been proposed, and would little suit the views of the Assembly.

“ It is with the most profound grief that we find ourselves compelled to represent to your Majesty, that during several years past the incomes derived from real estate in this Province, the profits of trade and industry, and the wages of labour therein, have greatly diminished and still continue to diminish; that under these circumstances it would not be equitable to impose Taxes or new Duties on its Inhabitants for the public uses: and that there exists no other resource which can reasonably be depended upon, to aid in the diffusion of knowledge and to facilitate the exertions of individual industry, than the proceeds of the existing revenues levied within the Province.”

This expression of “ profound grief,” for the declining state of the Province, merely serves as an introductory lamentation to the grievance which follows;—and it deserves no more than a passing notice.

That this Province may have suffered, “ during several years past,” by the consequences of a transition from war to peace, and by commercial reverses, arising from imprudent speculations, or the uncertainty of trade, is not attempted to be denied:—But it can be shewn that it has only suffered equally with all other parts of the great commercial empire to which it belongs; and that at the present moment its commerce and revenue are increasing—its agriculture improving,—its settlements and population rapidly growing and extending,—its labouring classes and artisans enabled to live in a degree of comfort unknown in the same conditions of society in the mother country;—and, in short, the various branches of industry and occupation exhibiting indications of improvement and general prosperity that completely refute this exaggerated and false representation of its depressed state: It can be shewn that if new taxes were called

for, its resources for taxation are unimpaired ; and that the population of the Province is in fact less burthened with taxes than that of any of the neighbouring colonies or of the United States, or of almost any country in the world ;—But no new revenues are required, “ to aid in the diffusion of knowledge, “ and to facilitate the exertions of individual industry ;” No new taxes have been imposed on the Colony, for the purpose of raising a revenue, for the last twelve or fifteen years ;—No new taxes have ever been proposed by the Government since the war : on the contrary, all that it has required of the Assembly, and required in vain, has been that the accumulating surplus of the existing revenue should be applied to the useful objects, the obstruction of which this Petition affects to deplore.

“ Nevertheless, *more than one half* of the *gross amount* of all its Public Revenues has been applied for several years past, in payment of Salaries, Emoluments and Expenses of the Civil Government, exclusive of the usual and indispensable special appropriations ; and our anxiety is the greater, as these Salaries and Emoluments and Expenses *have been greatly increased without the consent of the Legislature* and have in some instances *been paid to persons who do not reside in the Province, or have rendered no service therefore ;* and in other cases *the said Salaries and Emoluments and Expenses are excessive,* when compared with the incomes derived from real estate in this Province, and the usual recompense obtained therein by individuals of talents, character and industry equal to those possessed by the persons to whom the said Salaries and Emoluments are paid out of the Public Revenue of this Province ; and lastly, *in addition to those unnecessary and excessive Salaries and Expenses,* Your Majesty’s Subjects of this Province *are also burthened with various and increasing Fees paid to the Officers of the Civil Government,* which are grievous to the Subject, diminishing the protection of the Laws, the benefits of Government, and the resources of the Country for its necessary wants.”

In the statement here made, that *more than one half* of the *gross amount* of the Public Revenue has for several years been expended in paying the Officers of the Civil Government, there is a convenient degree of ambiguity that avoids absolute falsehood.

The *gross* annual Revenue of the Province for seven years past has exceeded £100,000; for the last four years, it has been about £120,000 per annum ; But the *Salaries, expenses and emoluments of the Officers of the Civil Government of the Province*, by which must be understood only that which goes to the clear benefit of those Officers, and not what they expend for the contingencies of the Public Service,—have not on an average exceeded £45,000.—Each of the other branches of this article of complaint is susceptible of a clear refutation or satisfactory answer, so far as the conduct of the Provincial Government is concerned, and they shall be taken in their order :—

1.—Increase of Salaries without the consent of the Legislature, and their disproportion to the incomes of other classes in society.

2.—Salaries to Absentees and Sinecures.

3.—Various and increasing fees, burthening the subject.

1.—The Salaries, emoluments and expenses above-mentioned, have *not* been increased *without the consent of the Legislature* :

No increase in the emoluments of the Officers of Government has been made since the year 1825, when the Assembly passed their votes upon every item of public expense, and the Bill founded upon those votes became a law ; and, in consequence of the objections they made to some heads of expense, there has been a *diminution* instead of an increase of public Salaries, except in the sum of £200 added in 1826, by the authority of His Majesty's Government in England, to the Salaries of the Judges at Gaspé, and in the Inferior District of St. Francis.

A Salary of £200 was likewise, in 1823, authorized by His Majesty's Government, to be granted to the Advocate General, and having been included in the Treasury Warrants issued in 1826, for the application of the funds appropriated for the Administration of Justice, it has continued to be paid notwithstanding the disallowance of the Assembly.

All the other Salaries and emoluments of resident Public Officers were canvassed in the Assembly when the Bill of appropriation passed in 1825, they then admitted their amount to be just and reasonable (after having the year before voted a reduc-

tion of 1-4th) with the exception of about £1,000; and both they and the *soi-disants* constitutional Committees who have taken up their representative authority, and now act as their substitutes in framing these Petitions, are precluded from saying that those Salaries are "*unnecessary*" or "*excessive*," or "*have been increased*" for many years "*without the concurrence of the Legislature.*"

But it may be worth while to look for a moment at the actual amount of the augmentations which have taken place *by the act of the Government alone*, since 1810, when the Assembly first offered to assume the Civil List, and then to set against them the reductions which have taken place in the same period. It will be found that the addition to the public expenditure in the shape of Salary or emoluments to public officers paid out of the Revenue, has not exceeded £5,000; and on the other hand the amount of reductions made by Government (either voluntarily or upon addresses from the Assembly) of Salaries, Sinécures, Pensions and Allowances, during the same period, is more than £2,500, leaving the real increase made by Government in Eighteen Years, only £2,500: while at the same time the Revenue at the disposal of Government has increased in that period from £20,000 to £35,000, and the general revenue from £70,000 to £120,000: The expenses of the Legislature, (which are not under the controul of Government,) increased in the same period from £3,700 to £10,000;—and in all the principal departments of Government public business has increased two and threefold;—The expenses in the Law Department, although regulated by a fixed tariff long ago established, have necessarily been augmented in amount, with a rapidly growing population and an enormous increase of crime;—But it may with truth be averred that except in this branch the Salaries and expences of Government have not increased in any degree proportionate to the growing demands of the Public Service.

The Salaries and Allowances objected to by the Assembly, in 1825, have all been, since then expressly sanctioned by His Majesty's Government in England, to be paid as formerly from the Revenues at the disposal of the Crown, excepting the Salaries of the French Translator, the Clerk of the Land Board, the second Clerk of the Crown in Chancery, the Clerk of the Market and two smaller sums; all which charges have since been abolished by Government, although some of them had been of long standing, and one of them (the Salary of the French

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Translator) had been borne on the establishment of the Civil Government, and paid out of the Crown Revenues since the year 1774.

So much for the accusations against the Government of neglecting practicable retrenchments.

2.—Salaries still paid to absentees, and sinecures, form the second head of this complaint; and the answer to it is, that His Majesty's Government in England, having fully considered the salaries in question, and the equitable claims of the individuals now enjoying them, have determined as before stated to continue the payment of them, for the present at least, out of the Crown Revenue, and they have accordingly been expressly authorized to be paid out of that fund, by Lord Bathurst's Dispatch of 7th January 1826, and by Warrants issued by the Lords of the Treasury for the expenditure of that fund in 1827.

The Salaries to Absentees are :—

To the Lieutenant Governor, (absent on leave since 1825, but not since then objected to by the Assembly,	£1500 0 0
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To the Secretary of the Province (on whom the situation was conferred in 1806 or 1807, by the Government in England, with the power of appointing a Deputy,)	£ 400 0 0
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To the Agent of the Province, in London, who is often employed by Government,	£ 200 0 0
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To the Lieutenant Governor of Gaspé,	£ 300 0 0
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With respect to the latter situation, the Government have earnestly and repeatedly, but in vain, pressed upon the Assembly the necessity of rendering it effective, by providing an equal pension for the present incumbent, (an aged man incapable of performing the duties,) in which case the appointment would have been conferred on a resident in the Province, with the title of Superintendant of the Fisheries only, and such an arrangement would have been productive of the greatest benefit to the remote and neglected District of Gaspé, where a resident officer, invested with such authority, has long been much wanted.

As to *Sinecures*, it is sufficient to say, that there are no situations on the Provincial Establishment to which the Assembly have ever objected on this ground, except those of the Absentees above-mentioned.

3.—“ Fees increasing to a heavy and grievous amount paid to “ divers officers of Government, to the burthen of the subject,” form another head of complaint.

In the year 1821, the Assembly had before them the tables of fees taken in all the Departments of Government ; but neither then, nor at any time since, have they represented them to Government, as excessive, nor have they been increased by Government, for the last twenty years, except in the case of a trifling fee allowed to the Surveyor General in 1818, upon Location Certificates—(a system then lately adopted for facilitating the settlement of lands) but this fee has since been *reduced* on Militia locations ; and at the same time a reduction took place of the fee of the Clerk of the Council on Militia land-Petitions.

Such is the share that the Executive Government has had in *increasing* the fees of the Officers of Government.

A reference to the returns laid before the Assembly, will shew, not only the before-mentioned facts, but also,—that almost all the fees received by Officers of Government are established, either *directly by Law*, or *under powers granted by Law* to the Courts of Justice in this Province, to establish tables of fees. In either of those cases it is manifest that the Executive Government is neither answerable for their existence nor invested with the power to change them ; *nor has any measure been adopted by the Assembly to diminish them, except in the case of the fees of the Clerk of the Markets, established under a permanent Law*, and of the before mentioned fees on Petitions and Locations, which are supposed to have been indirectly aimed at in a Bill brought forward in 1824, and then rejected by the Legislative Council :—It was renewed in the Assembly in 1825, but did not then pass that body, nor has it again been brought forward.

It is unnecessary here to advert to the Custom House fees, which have been abolished by Act of Parliament,—an Act of interior Legislation, on the part of the Supreme Legislature, of

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which the Assembly complain as an interference with the privileges and powers of the Legislature of the Province.

The only fees that have not the sanction of any existing enactment directly authorizing them, are

1.—The fees on land granting; these are established by His Majesty under his sign manual, the authority of which has never been disputed; and their amount is far below what is received in *all* the neighbouring Colonies on grants of land.

2.—The fees in the Executive Council Office and in the Provincial Secretary's and Surveyor General's Offices on documents prepared and furnished in those departments for the benefit of parties applying; These are fixed in part under an order in Council in the year 1797, and in part by long and established usage since the conquest; and their whole amount on an average of the last three years has not exceeded £100 a year, to each of those Officers.

3.—The fees to the Law Officers for Civil and Criminal business done for the Crown;—These are on the same scale now as twenty years ago, though they have in that time necessarily increased in amount with the increase of business; they were then fixed by the Executive Council and approved by the Government at home, *and they were provided for in the last appropriation Bill passed by the Assembly, in 1825, and by their votes in 1826;—* They are paid out of the public revenue, and not by "*individuals*" or by the "*subject*" to "*the Officer of Government*"; and they do not now exceed what they were in 1822,-3,-4,-5,-6 and 7, when the Assembly *passed special votes to cover the expense they occasioned.*

Upon all these facts, it may be asked, what are the fees "*increasing to a heavy and grievous amount,*" that are paid "*by the subject to Officers of Government?*"—and it may be averred that the assertions of this article of the Petition "*that Individuals are thereby burthened, the protection of Law and of Government lessened, and the resources of the Country for its necessary wants diminished;*" is a most gross exaggeration, an unfounded calumny, (in its intention,) against the Government, and a direct misstatement in the teeth of incontrovertible facts established publicly to the knowledge of those who framed the assertion.

“ We are convinced that besides the most perfect security of person and property, one of the most efficacious means of promoting the public prosperity and preventing its decline, is to aid in the diffusion of useful knowledge and the free exercise of individual industry and enterprize ; and we have witnessed with satisfaction and gratitude that our Provincial Legislature has appropriated very large sums of money for these objects since the close of the last War with the United-States of America ; but we have to perform the painful duty of humbly representing to Your Majesty, that the monies thus appropriated and applied under the direction of the Provincial Executive, have not produced the beneficial results that were to be expected from a legal and judicious application of them, and have been tardily or insufficiently accounted for.”

To understand the true meaning of this complaint, it is necessary to resort to the commentary furnished by the resolutions of the meeting of the inhabitants of Quebec, on which this Petition is founded.

The 6th of those Resolutions is in the following words :

“ That although large sums of public money have been appropriated by the Legislature of this Province since the conclusion of the late War, in aid of education and for facilitating industry, *by opening and improving the internal communications*, and that these appropriations have been applied under the direction of the Provincial Executive, they have produced no adequate advantages while many of the persons entrusted by the said Executive with the expenditure of the said monies, have tardily or insufficiently accounted for the same.”

These assertions are equally frivolous and false. The Assembly flung abroad the Public Revenue in large and ill-considered grants for general purposes, without instituting those preliminary inquiries, which a wise policy would have dictated, to ascertain where the public money might best be applied, and what was the most prudent, efficient and economical manner of expending it. On both these important points, the whole responsibility was thrown on the Executive Government, which was left to explore its way through them by private and casual information.

But let the two principal heads of this grievance be examined ; and

1st, As to Internal Communications :

In the 25 years which elapsed after the granting the present constitution, scarcely £1,000 was appropriated for opening roads: although during that time the revenue had increased from £6,000 to £150,000, and a new population had forced its way into the uncultivated parts of the Province, and occupied a portion of its surface, exceeding the whole extent of the seigniorial concessions.*

In 1815, the Legislature granted £8,000 for Internal Communications, and in 1817 £55,000, and since that period little more than £3,000 has been appropriated for that purpose, of which a part remains undrawn.

The Provincial Government would gladly have escaped from the responsibility of directing the application of the large grants made in 1815 and 1817 ; but it took the only practicable course to secure the attainment of the object the Assembly might be supposed to have in view.

These monies were entrusted to seventy Commissioners, appointed at different periods ; of these Commissioners, more than 25 were Members of the Assembly, or, in a few instances, of the Legislative Council ; and upwards of 50 were Canadian Gentlemen, of whose probity and zeal in the execution of the trust the Government did not entertain a doubt, *recommended as they generally were by the Members of the Assembly for the several Counties.*

The Government had no alternative, but to trust to the local knowledge of these Commissioners for the public, and if after every precaution being taken to ensure economy and a proper application of the money granted, no "*adequate advantages*" have been produced, it is not to be attributed to the Government, but rather in many instances to the interested views and misrepresentations of the persons so trusted by it, to their preference of their own pecuniary advantage, or local interests to their public duty ; and more especially to the negligence of the Legislature in not following up the system which they began in 1815 and 1817 by a succession of grants for completing and keeping open the roads which were then made.

* During the last 30 years, the small Province of Nova Scotia, with a revenue never exceeding £70,000, has expended about £300,000 in opening and improving its roads.

Indeed to this vague and general allegation, that no adequate advantage has been derived from those appropriations, (a complaint that must attach to most Legislative grants,) it might be a sufficient answer to say, that the fault must equally rest with the Legislative bodies, to whom, under an express provision of the Acts of appropriation, annual reports were made by the Commissioners, of the nature and progress of the works undertaken, and of the cost attending them. Why did not some of the very persons who now prefer these complaints, and who were then members of that body, stand forward with the zeal which they display at this late day, and arraign the conduct of these Commissioners or of the Government that trusted them? It is impossible not to see, that these are false and exaggerated grievances, only now raked up to swell the mass of calumny with which it was hoped to overwhelm the present administration.

It is admitted that many of these Commissioners have not accounted for the monies advanced to them;—But in the first place the advances were in general only made for the amount of specific contracts entered into by them with individuals, and approved by the Government, and there is no ground to suppose that those contracts have not been discharged since the individuals interested have not complained: in the next place the Commissioners being obliged by the Act under which they were appointed, to report their proceedings annually to the Legislature, the Assembly from whom these complaints of “inadequate advantages” and “tardy and insufficient accounting” must be taken to proceed, have had before them annual reports of the expenditure of the money and the nature of the works, and these reports either made or presented by Members of their own body; and lastly, while a considerable proportion of these advances has been regularly accounted for, it has in other cases been deemed impracticable to compel persons to render a regular account who have been acting gratuitously in the discharge of an onerous public trust; who were in most instances little versed in the forms and rules to be observed in the Audit of Accounts; and who in fact could not otherwise be compelled to account than by the severe method of a suit at Law, the expense of which it would have been equally unjust to lay upon the Crown, which has not been supplied with the means of meeting it and would probably gain nothing by the result,—or upon the public Commissioners who would in most cases be found to have fully expended the money entrusted to them.

The Government has not, however, neglected to use all other means of enforcing upon those persons the necessity of rendering Account ; and, in point of fact, by repeated and urgent applications they are daily removing this pretext of complaint without being subjected to a long, harassing and expensive litigation.

2.—As to the sums expended on education ; the assertion that these sums “have not been accounted for,” is in such an extraordinary and notorious degree at variance with the truth that it is difficult to understand with what object or meaning it has been advanced.

During the last twenty years the *special* appropriations made by the Legislature for education (exclusive of the annual Salaries allowed to Schoolmasters under the general School Act of 1801) have not exceeded £2,500.

The Acts making these special grants have always contained an express provision that accounts of the expenditure should be rendered to the Legislature, which has regularly been done in a satisfactory manner ; for the grants were continued in the very last Session of the Provincial Parliament.

If these special grants have not produced “*adequate advantages*,” the Legislature must look to the persons or Societies to whom the expenditure was specifically committed by the Acts of appropriation.

The Salaries of the School-masters under the general School Act before-mentioned, have been regularly stated to the Legislature in the yearly accounts. It cannot be denied, however, that owing principally to the want of countenance from the Roman Catholic Clergy, many of the Schools for which these salaries were granted, had for a long time previous to 1820, produced but inadequate or partial advantages.

In that year, the Corporation contemplated by the School Act of 1801, was at last constituted by Government, and from that moment, notwithstanding the same want of co-operation (to say the least of it,) on the part of the Roman Catholic Clergy, the management of these public Schools has been most unremittingly and effectually improved, and the public money expended with an economy and increasing utility not exceeded in any other country.

In 1820, there were 30 public School-masters under the Act of 1801, enjoying Salaries generally of £50 or £60 a year. The

amount thus drawn from the Public Chest was upwards of £2,000 and the number of Scholars taught only 1,200.

In the year 1827, there were in these Schools 80 School-masters, whose Salaries were reduced to an average of about £25 each ; the whole amount drawn from the Public Chest was little more than £2,000, and the number of Scholars has increased to 2,400.*

Such is the mismanagement of the funds devoted to Education, for which the Government is maligned.

" It is with the utmost pain that we are compelled to represent
 " to Your Majesty, that in this Province of the British Empire,
 " large sums of public money of the revenue levied within this Pro-
 " vince, have been applied, year after year, by Warrant of the Exe-
 " cutive Government, without any appropriation of the Legislature
 " of the Province, (at a time when the necessary appropriations
 " were rejected in the said Legislative Council,) in payment of
 " alledged Expenses of the Civil Government and other Expens-
 " es for which no services were rendered to the Province, or for
 " new and increased Salaries and allowances never recognized
 " by the Legislature. Were we to refrain from complaining of
 " such an enormous abuse, we should co-operate in consolidating
 " our slavery, and we humbly implore Your Majesty's justice."

This allegation against the conduct of Government has already been briefly answered in reviewing the Montreal Petition ; but as it is here brought forward more in detail, it deserves a more particular examination.

It is distinctly admitted that large sums of the Public Revenue have been applied in payment of the expenses of the Civil Government, without any appropriation by the Provincial Legislature.

The answer is, first, that large sums of the public Revenue are by Law placed at the disposal of the Crown, and do not require the interference of the Provincial Legislature to authorize the expenditure of them ;—and secondly, that the further sums which have, without legislative appropriation, been taken from the unappropriated monies of the Province, over and above the revenues at the disposal of the Crown, have been so taken

* In four Townships alone there are 21 Schools and 1240 Scholars, and the expense to the public is about £400,—or, six shillings per annum for each Scholar.

under the necessity of the case, in consequence of the failure of Bills of Supply in the Legislative bodies.

This charge against the Executive Government involves the whole question of the Provincial Civil List, which has been in contest in the Legislature since 1818.

The Governor in Chief in 1821 and 1822, in compliance with instructions he had received, called upon the Assembly to grant a Civil List, either permanently or for the King's life. They refused these successive applications, and insisted upon voting the whole salaries and expenses of Government annually, and by items. The Legislative Council could not agree to this mode, and it was equally contrary to the Governor's instructions. The same disputes prevailing in 1824, 1826, and 1827, and no appropriation having been made for the ordinary wants of Government, to supply the deficiencies of the Revenue at the disposal of the Crown, it only remained for the Executive Government to apply that Revenue, as far as it would go, to pay the Public Expenses, and to assume the responsibility of taking the remainder from the unappropriated monies accumulating in the Public Coffers ;— There could be no question as to the adoption of this course so far as regarded the indispensable wants and services of the Government ;—for, whatever might have been the reckless purpose of a party in the Assembly, it was the duty of the Governor not to allow the operations of Government to be stopped or the whole frame of society to be dissolved ;—the Courts of Justice were not to be closed, nor the Gaols to be opened, nor the Servants of the Public to be deprived, after having performed their duties,—of their established Salaries, because the different branches of the Legislature could not agree upon the mode in which the public expenses were to be provided for.

As a matter, therefore, of public necessity and of public justice, the Governor in Chief paid the Public Salaries and Expenses, as all his predecessors under similar circumstances, had done before him :—more than this he has not done ; and, had he done less, he would have shewn himself wanting to the high situation in which he was placed, and would have assumed a greater responsibility, and incurred a heavier and more deserved accusation than that now brought against him.

The sums which he so advanced were not for “ new or increased charges,” but such as were in the ordinary course of the ad-

ministration of justice and of Civil Government :—The Salaries were for Offices established before he assumed the Government, and the amount has been admitted either before or since by votes of the Assembly ;—And the contingent expenses of Government necessarily varying from year to year according to the exigencies of the public service, were paid upon accounts duly rendered by the various Public Servants and Departments, and checked, controlled and audited by the Inspector of Accounts, the Board of Audit and the Executive Council ; and finally, all these public expenditures were annually laid, without reserve, before the Assembly, with a distinct admission of the fact that the unappropriated monies had been used under the necessity of carrying on the Government notwithstanding the failure of the Bills of Supply, and the Executive Government submitted its conduct to the Legislature for a Bill of Indemnity :—It is true that such indemnity has not passed the Upper House on account of the encroaching pretensions of the Assembly ; and that the Assembly have refused to grant an indemnity for some of the expenditures, alternately rejecting and admitting the same identical charges, and this without examination as to their necessity : But they have not attempted to allege any waste or misapplication of the public monies, otherwise than because they had been applied without or beyond their vote or estimate.

The assertion contained in this accusation, that the public monies had been applied, without appropriation, to “ expenses for which no services were rendered,” or “ for new and increased Salaries not recognized by the Legislature,” has already been sufficiently refuted and exposed.

“ Alike negligent in the preservation of the Public Monies and prodigal in their expenditure, the Executive Government of this Province has not only suffered the dissipation of large sums of money in the hands of the Receiver-General and other depositaries thereof, then and still under its superintendence and controul, but has appointed other officers in the stead of these faulty Depositaries, without taking any sufficient security for the future ; and having advanced to different persons, large sums of money appropriated by the Legislature, the neglect of the Executive Government in this respect has been such, that several of those persons have not accounted at the time when they ought to have accounted ; some have insufficiently accounted or not rendered any account ; and notwithstanding

“ their negligence and default, some of these persons have been appointed by the Executive Government to offices of trust, honor and profit ; and we most humbly represent to Your Majesty that the Executive Government of the Province, by its negligent conduct in these respects, has exposed Your Majesty’s subjects in this Province to heavy and grievous losses, dissipated and endangered the resources of the Province, and subjected its Inhabitants to unnecessary burthens.”

This accusation, so far as it relates to the defalcation of the late Receiver-General, has already been before His Majesty’s Government in the shape of a Petition for repayment of the amount from the Imperial Treasury, and the decision has been, that the Government is not answerable for the amount.

When the Assembly passed the first Bill of Supply in 1793, which stands now in the Statute Book 33 Geo. III, they expressly enacted that the duties thereby imposed should be paid into the hands of the “ King’s Receiver-General, *as the Treasurer of the Province for the time being* ;”—They have made all subsequent duties payable to the same Officer ; They have thus made him *their Officer*, and it was competent to them and their duty as the Guardians of the public purse to enquire and ascertain that the public monies were secure ; and if they were not, to address the Crown to cause greater security to be taken.

They never adopted this course, nor was it ever even proposed ; but while they were disputing with the other branches of the Legislature upon the question of the Civil List, and resolving, in order that they might stop the public service, to hold the Receiver-General “ *personally responsible*” if he paid the Governor’s Warrants for the public service without an appropriation by Law, the public monies of the Province disappeared, and the Assembly then made the discovery that the Receiver-General was the officer of the King and not of the Province, that they had no controul over him, and that the Treasury of the Mother Country was bound to repay the deficiency.

Who were the “ other depositories” of public monies that have been guilty of “ *dissipating*” them, it is not possible to discover ; unless the former Sheriff of Quebec be alluded to,—an officer of a Court of Justice in no way under the controul of the Executive Government as far as relates to the money of individuals in

his hands,—and not entrusted in any other sense with “Public monies,” than as an officer of the Court. Sufficient security was taken for the due performance of his trust ; when he was dismissed from his situation in 1822, an action of account was brought and is pending against him, and when it is determined, his Estate and his Securities will be answerable.

In the case of the Sheriff of Quebec and the other Sheriffs appointed since that period, particular care has been taken to exact such security as the Courts under whose direction they act have recommended as sufficient. The appointment of the present Receiver-General without security being required, has already been fully explained and justified, and the complaint made in this clause that public Accountants have not rendered their Accounts has also been answered and refuted. With respect to the remaining vague allegations of this charge, it might be sufficient, in the absence of any specification, distinctly and broadly to deny that any depositories of public money, either known or supposed to be defaulters, have been appointed to situations of trust or pecuniary responsibility ; but it can be shewn by reference to the statement of public monies unaccounted for, which was laid before the Assembly in February 1826, and which embraces a period of more than twenty years, that of all the persons therein named—and here alluded to as “defaulters,”—not more than three or four have been appointed to offices of trust, honor or profit since the public money was advanced to them ; and the amount remaining unaccounted for in their hands does not exceed £600 ; which, however, is known to have been expended by them for the public service :—Such are the “heavy and grievous losses” to which, according to this clause of the Petition, “His Majesty’s faithful subjects have been exposed,”—such the extent of the abuses by which “the resources of the Province have been dissipated and endangered and its inhabitants subjected to unnecessary burthens.”

“Your Majesty’s faithful subjects in this Province have already forwarded humble representations to Your Majesty’s Government on the subject of the College and Estates heretofore in the possession of the late Order of Jesuits in this Province, and while we deplore the unfavourable result of our past endeavours, we nevertheless continue to entertain the most per-

fect confidence, that so soon as the truth shall be fully known to Your Majesty, justice will be rendered unto us ; and we humbly represent that as the said Order was never the proprietor of the said College and Estates, but merely the Depository thereof, *for the Education of the Youth of Canada, the extinction of that Order* could not confer on the Sovereign any other rights on that property than were possessed by the said Order ; and that Your Majesty succeeded to the possession of those Estates, subject to their being applied to the Education of the Youth of this Province, *conformably to their primitive destination* ; and it is with the most profound grief that we find ourselves still deprived of the benefits which were formerly derived from the application of that property to these objects under the direction of the Jesuits, *while Education is languishing amongst us for the want of those resources.*"

The same complaint is brought forward in the following passage of the Montreal Petition, with an insidious and insulting comparison between the "truly Royal munificence of the Kings of France" and the conduct which His Majesty has pursued with respect to these Estates :

"L'Education est le premier des biens qu'on puisse donner à son fils, le premier des biens qu'une législation éclairée puisse assurer aux peuples. En rendant justice aux efforts qui ont été faits dans ce Pays vers cet objet important, par plusieurs corps et par un grand nombre de particuliers, on ne peut cependant disconvenir que l'éducation publique *n'est pas encouragée dans ce Pays en proportion de ses besoins*. Et pourtant la Province n'était pas dépourvue de moyens : la munificence des Rois de France et les bienfaits de quelques particuliers n'avaient rien laissé à désirer à ce sujet. Des fondations vraiment royales tant par leur objet que par leur étendue, assuraient à ce Pays des ressources suffisantes pour le tems, et croissantes avec les besoins de la population. Depuis l'extinction de l'ordre des Jésuites en ce Pays, ses biens sont passés aux mains du Gouvernement de Votre Majesté. Votre Majesté peut seule les rendre *à leur première, à leur bienfaisante destination*. Nous l'en supplions très-humblement. Qu'il puisse pas être dit que cette Province a été privée, sous le Gouvernement du Roi constitutionnel de la Grande Bretagne, des bienfaits que le Roi absolu de la France lui avait conférés pour l'éducation de ses habitans."

Encouragement and means to promote Education have been constantly solicited by the Executive Government of this Province, and if any deficiency is to be complained of, the cause of it is to be found in the Provincial Legislature. No institution for education, existing in the time of the French Government, has been suppressed by the British Government—no private establishment or benefice has been taken away; but on the contrary, large and valuable Estates have remained since the conquest in the hands of the Seminary of Quebec, while the Seminary of Montreal has been left in undisturbed enjoyment of a still more extensive and more productive property, to which the Crown has an incontestable right. The order of the Jesuits alone has been allowed to become extinct in this Province upon their total suppression in other countries, and the property is in the hands of the Crown. The application of the Revenues of this property under the direction of the Crown has long been objected to by the Assembly, who have repeatedly addressed the Government of the Province and His Majesty's Government in England to *restore the Estates to the Province and place them at the disposal of the Legislature*; but these demands have been uniformly resisted or neglected both here and at home. His Majesty's Government have, perhaps, been of opinion that the *Legislature of the Province* had no better claim or title to these Estates than the Crown itself;—that as far as regarded the *administration* of such a property, the three branches of the Provincial Parliament could scarcely be deemed a more convenient or efficient board of management than a Commission appointed by the Crown, the Constitutional Trustee and Administrator of public property; and that the claim set up on the part of the Province to share in the benefit of these Estates was in truth wholly without foundation in Law or Equity.

All the attempts to establish this claim from the year 1770 to the present day, have been founded on the pretension that these Estates were originally given to the Jesuits for the Education of youth, and that therefore His Majesty, who, it is alleged became entitled to them *on the extinction of the Order*, can only now hold them subject to their original destination. It has repeatedly* been shewn that the premises and the conclusion of this argument are

* See Sir James Marriott's Report 12th May 1765, and the Report of the Attorney and Solicitor General of this Province, 18th May 1790, as published in 1824, in the Appendix to a Report of a Special Committee of the Assembly on the state of Education.

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alike unfounded ; that His Majesty's title to these Estates arises not from the extinction of the Order of Jesuits, but from " the " right of conquest, and acquired sovereignty,"—the articles of capitulation proposed in 1759, in favor of the Jesuits, having been refused, and the Crown of France " having made no provision in the articles of cession to save the pretended rights of the community of Jesuits" whereby * " the possessions of the Society lost of course all civil protection by the fate of War and became a *derelict* at the mercy and *entirely free* disposition of the Crown of Great-Britain :"—It has been further shewn that neither the terms of the particular donations of these Estates nor the institutes of the order to which they were given, limited their destination to purposes of Education. In the abstract of the original titles and donations of these Estates which is given in the Appendix to the Report of the Committee of the Assembly before referred to, the " motives and considerations" on which the donations, grants or purchases were made are particularly set forth, but in no case are they limited to the purposes of Education. The establishment granted to the order by the French King in July 1651, merely placed it on the same footing on which it then stood in France ; and the subsequent Letters Patent of *amortissement* by the King of France in 1678, which are relied upon as fixing the destination of these Estates, (besides that they only relate to a *part* of them) contain no limitation or restriction, nor any other consideration than that " of promoting the greater glory of God, the establishment of the Catholic, Apostolic and Roman Religion in Canada, and to oblige them (the Jesuits) to continue their prayers for His most Christian Majesty's prosperity and health and the preservation of his government."

The general rule and institute of the order, so far from creating or confirming the pretended destination of their property to Education, was calculated to render null such a restriction if it were imposed. It is true that the members bound themselves by one of their vows to devote themselves to the instruction of youth ; but they were also bound in all things to an unlimited and unvarying obedience to the Father General, who had full power to alter at pleasure the whole constitution of the Order, and to direct its energies to what purposes he pleased. All its property, however otherwise limited, was to be held subject to such uses as he should appoint,—all donations being considered

* Sir James Marriott's Report.

to be made to and accepted by the Order—*ita ut in OMNIBUS servetur ratio instituti*. The vow to devote themselves to the Education of Youth was therefore subject in all things to the first and great command, of obedience to their head,—the only certain and unchanging institute of their Order:—Education was, indeed, neither their only nor their principal object of attention, but they made it subservient to their other objects and used it as a powerful instrument in attaining those ends, for the prosecution of which they were ultimately put down by the almost simultaneous acts of the Sovereigns of Europe and by the Papal See itself.* In this Province they of necessity ceased to have a legal existence when the new Sovereign refused to permit the continuance of their Order after the conquest;—and His Majesty might then have applied the revenues of their Estates to the general purposes of his government; but pursuing the same generous and liberal policy by which the whole conduct of the British

* The following passages from the elegant historian of Charles V. will serve both to illustrate and establish what is here advanced respecting the purposes for which the Jesuits applied themselves to Education, and acquired property:

“As it was the professed intention of the Order of Jesuits to labour with unwearyed zeal in promoting the salvation of men, this engaged them of course in many active functions. From their first institution they considered the Education of Youth as their peculiar province; they aimed at being Spiritual guides and professors, they preached frequently in order to instruct the people; they set out as Missionaries to convert unbelieving nations:—Before the expiration of the sixteenth century they had obtained the chief direction of the Education of Youth in every Catholic country in Europe; they had become the Confessors of almost all its Monarchs, a function of no small importance in any reign, but, under a weak Prince, superior even to that of Minister. They were the Spiritual guides of almost every person eminent for rank or power: they possessed the highest degree of confidence and interest with the papal Court, as the most zealous and able champions for its authority.

“The advantages which an active and enterprising body of men might derive from all these circumstances are obvious: they formed the minds of men in their youth; they obtained an ascendancy over them in their advanced years. They possessed, at different periods, the direction of the most considerable Courts in Europe;—they mingled in all affairs; they took part in every intrigue and revolution. The General, by means of the extensive intelligence which he received, could regulate the operations of the Order with the most perfect discernment, and by means of his absolute power could carry them on with the utmost vigour and effect.

“Together with the power of the Order, its wealth continued to increase: various expedients were devised for eluding the vow of poverty. The order acquired ample possessions in every Catholic Country, by the number as well as magnificence of its public buildings, together with the value of its property, moveable or real, it vied with the most opulent of the monastic fraternities.” “Besides the sources of wealth common to all the regular clergy, the Jesuits possessed one which was peculiar to themselves. Under pretext of promoting the success of their Missions, and of facilitating the support of their Missionaries, they obtained a special Licence from the Court of Rome to trade with the nations which they laboured to convert.—Not satisfied with trade alone, they imitated the example of other commercial societies, and aimed at obtaining settlements. They acquired possession accordingly of a large and fertile Province in the Southern continent of America, and reigned as Sovereigns over some hundred thousand subjects.—Such was the tendency of the discipline observed by the Society in forming its members, and such the fundamental maxims in its constitution, that every Jesuit was taught to regard the interest of the order as the capital object to which every consideration was to be sacrificed.”—Robertson's Hist. Charles V. vol. 2, pp. 137-8.

Government towards this Colony has been marked, the Crown has for a long series of years expended those revenues for pious and useful purposes, similar to those which the Jesuits professed to have in view; and the income of the Estates has been and still is applied, after defraying the expenses of management and of the improvement of the property, in payment of the stipends of teachers of public schools, and in occasional grants for the building and repair of Churches of the three principal persuasions.

“ The settlement of the waste lands in this Province, the importance of which has already, at various times, occupied the attention of Your Majesty’s Imperial Government, has been neglected in the most unaccountable manner by the Executive Government of the Province, so that large portions of the said lands, granted or reserved by the Crown, have been long held, and continue to be held in the midst of, or in the immediate vicinity of actual settlements, without the owners or possessors thereof having been compelled to perform the duty of settlement upon which the said lands were granted by the Crown, or any other duty in relation to the said lands, to the grievous burthen of the actual inhabitants, the discouragement of new Settlers, and the obstruction of the general increase and prosperity of the Province.”

Whatever truth there might once have been in this allegation as to the abuses in the former system of granting the Waste Lands—(and it would not be difficult to shew that the evils of that system have been much exaggerated, and are in fact mainly attributable to the neglect of the Legislature in not opening roads)—the charge as it now stands affords only a fresh evidence of the unscrupulous spirit of misrepresentation that distinguishes the rest of these accusations against the Government. Those who framed this complaint could not but have been aware that all grounds and pretext for it had long since ceased to exist; and that the present administration has been particularly instrumental either in procuring the suppression of the evils here complained of, or in obtaining a remedy for the consequences of them—For nearly twenty years past the system of making large grants of Land to individuals and their associates has been discontinued, and a practical system of locations in small lots for actual settlement under the superintendence of local Agents has, since 1820 been substituted. At the same time the local Government has obtained the authority of an Act of Parliament for the erection of a

Court of Escheats, by which Lands that are subject to forfeiture for non-performance of the conditions of cultivation may be resumed.

“ But of all the abuses of which the Inhabitants of this Province have to complain, the most afflicting to your Petitioners is, that during the prevalence of the aforementioned and various other abuses and grievances, false representations and repeated attempts have been made by divers officers of the Provincial Executive, possessing the confidence of Your Majesty’s Government, to obtain from Your Majesty’s Government in England, and the Parliament of the United Kingdom, various alterations in the Constitution of the Government of this Province as established by Law, without the knowledge of Your Majesty’s faithful Subjects in this Province, in contempt of their most sacred rights and dearest interests; and this at a time when a majority of the Executive Councillors, Judges and other Officers in the Legislative Council prevented the Inhabitants of the Province from having an authorized Agent in England to watch over and support their interests, and enable them to be heard by the Government of the Mother Country; and it is under these circumstances that the Act of the Parliament of the United Kingdom,* Fourth George Fourth, Chapter Six, reviving or continuing certain temporary Acts of the Provincial Legislature levying duties within this Province, and the Acts affecting the tenure of Lands therein were passed, without the knowledge of its Inhabitants, to the subversion of their rights and dearest interests, and particularly without the knowledge or consent of the proprietors more immediately interested in the last-mentioned Acts. It is with the most afflicting sensations that we have witnessed the intrigues which have been in operation to despoil Your Majesty’s faithful subjects in this Province, of the rights and benefits which were granted and guaranteed to us, by the supreme authority of a powerful and generous nation, under the auspices of its most illustrious Citizens.”

In the Montreal Petition ;—

“ UN des droits naturels, fondamentaux inaliénables des Sujets Britanniques, un des titres de leur gloire et de leur sûreté, c’est

* The Act here intended is probably the 3d. Geo. IV. c. 119, commonly called the “ Canada Trade Act.”

" le droit de se taxer eux-mêmes et de contribuer librement aux
 " charges publiques selon leurs moyens. A ce titre naturel nous
 " joignons encore les droits résultans de la loi écrite, des Actes
 " du Parlement Impérial qui déclarent que l'Angleterre renonce
 " à imposer des taxes dans les Colonies, et qui donnent à cette
 " Province le droit de faire des lois pour sa tranquillité, son bon-
 " heur, et son bon Gouvernement. Nous supplions humblement
 " Votre Majesté d'excuser notre témérité, ou bien plutôt d'ap-
 " prouver la confiance en votre Justice et en celle du Parlement
 " Impérial, qui nous engage à nous plaindre de ce que ces droits
 " ont été lésés d'une manière grave par des Actes du Parlement
 " Impérial. Nous faisons allusion surtout à l'acte de commerce
 " du Canada, et à celui des tenures contre lequel nous avons
 " déjà adressé par la voie de nos Représentans à Votre Majesté
 " nos humbles réclamations : l'un établit directement des impôts
 " dans cette Colonie, et les rend perpétuels sans la participation
 " du Parlement Provincial ; l'autre touche à des objets de législa-
 " tion intérieure sur lesquels nous croyons humblement que la lé-
 " gislature coloniale avait pleine juridiction.

" Nous croirions, SIRE, mériter bien peu les inestimables
 " bienfaits que nous procure la constitution qui nous régit, si
 " nous ne faisons tous nos efforts pour la conserver intacte.
 " C'est prouver combien nous en sentons tout le prix."

All those who may have felt any alarm at the formidable list of
 abuses with which the Executive Government is charged in the
 preceding clauses of these Petitions, must derive consolation
 from the declaration in the above quoted passage of the Quebec
 Petition that "the most afflicting" of all the evils of which the
 inhabitants of the Province have to complain, is, that attempts
 have been made to alter its constitution. These passages of the
 two Petitions relate to the beneficent interference of the Imperial
 Parliament to improve the condition of the country, and to
 remedy undoubted evils. They are in fact accusations against
 the British Government, and Parliament, for passing the Canada
 Trade Act in 1822, and the Canada Tenures Act in 1825. These also
 are among the "greatest afflictions" of this unhappy Colony.
 Who the Colonial Officers were that are alleged to have solicited
 the proposed union in 1822, which is one of the afflictive mea-
 sures here referred to, it would be impossible even for those who

make the assertion to say ; But certain it is, and susceptible of proof by public documents and public persons in England, that the project of the Union, and the two Acts of Parliament here complained of, did not originate in Lower Canada, and that the Union was publicly opposed in this Province by at least as many officers of Government as there were found supporting it.

The passing of the Canada Trade Act was occasioned by the frequent and obstinate refusal of the Assembly of Lower Canada, to meet the just demands of the Upper Province, for an adjustment of her Financial claims,—and it was passed at a time when the Assembly of the Lower Province (after adopting the practice of continuing the Revenue laws, in which Upper Canada was interested, *from year to year*,) suddenly allowed one of the most productive of those laws to expire. The Imperial Parliament thought it wise, necessary and just to Upper Canada, to rescue her from such a dependence upon the precarious legislation, or factious spirit prevailing in the Legislature of her sister Province, and enacted that the Revenue laws existing in Lower Canada should be permanent, *until repealed with the consent of the Legislature of Upper Canada*. Some measure of this kind was evidently called for, as a modification of the original constitution of these Provinces, and to supply the omission of those provisions which the Act of 1791 ought to have contained on the important point of the relative interests, and the dependence of Upper on Lower Canada in matters of Revenue. It was a measure which it was as competent to the Imperial Parliament to adopt in 1822, as in 1791. It imposed no taxes upon the Colony which had not before existed under Provincial Acts, up to the time of its introduction into the Imperial Parliament,—and it left those which were thus rendered permanent, to be applied as they were before,—except that it provided an equitable mode of arbitration, to which neither Province now objects, for adjusting the right of one, to a proportion of the Revenue levied in the other.

The provisions of this Act and of that of 1825 for the gradual extinction of feudal burthens and tenures in Lower Canada, *as the inhabitants should apply for it*—need only be adverted to for the purpose of shewing the spirit in which these attacks upon the supremacy of the Imperial Legislature are made, and the obstinate and unreasonable prejudices which rendered the interference of that power necessary. The impolicy of allowing those

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burthens on the alienation of property to exist, will hardly be questioned at the present day : and no one acquainted with the History of Lower Canada, and the temper and views of those who have taken the lead in the Assembly, at any time, during the last twenty years, will suppose that any relief from those burthens was to be expected from that body.

Looking to this Province as a Colony to which British subjects might emigrate, it became the British Parliament, in consonance with the general views of the Statesmen who framed the Colonial constitution of 1791, to enable the people of the Colony to assimilate their tenures to those most familiar to Englishmen. But it was left to their free and voluntary choice to do so, or not, as they should think fit.

The clause of the Act of 1825, respecting the application of the laws of England, in respect of free and common soccage tenure, is no more than declaratory of the Act, 14th Geo. III. which exempted such lands from the operation of French laws, without enacting by what laws they should be governed.*

But this also is to be considered an infringement of the rights of the Provincial Legislature !

The enactments contained in the same Act, respecting the escheating of lands in free and common soccage are included in this general complaint against it. The waste lands of the Crown are specially reserved by the Act of 1791 as a subject with which the local Legislatures cannot interfere, except with the consent of the King and Parliament of Great Britain ; and the waste lands to which the King is entitled by right of forfeiture, may be considered as standing in the same light. However this may be, the Provincial Legislature when called upon in 1824, had not given the Crown the necessary facilities to resume their lands, though the public benefit to be derived from the measure was unquestionable. The King might have erected such a Court by his prerogative ; but it might be doubted whether he could regulate its practice and course of proceeding ;—and the Imperial Parliament, in the wise exercise of its un-

* It is distinctly stated in a marginal note on the first draught of the Constitutional Act of 1791, (sent out by Mr. Grenville in 1789) that as soccage lands were exempted by the 14th Geo. III. from the operation of French laws, they were considered as falling under English laws. But the opinions of the first law authorities in the Province, in 1804, were much divided on this point.

doubted supremacy came in aid of the Prerogative, and passed a law with the necessary provisions to give effect to the measure.

“ We most humbly implore Your Majesty to take this our
 “ Petition into Your most gracious consideration, to exercise
 “ Your Royal Prerogative, so that Your Majesty’s faithful sub-
 “ jects in this Province may be relieved from the aforesaid abuses
 “ and grievances, and justice be done in the premises, that
 “ Your Petitioners may be maintained and secured in the full
 “ enjoyment of the Constitution of Government, as established
 “ by the Act passed in the thirty-first year of the Reign of our
 “ late Sovereign Your Royal Father, without any alteration
 “ thereof whatsoever.”

Every true friend to Government will heartily join in the first branch of this concluding prayer of the Quebec Petition, that all abuses and grievances when they are shewn to exist, may be redressed. But they will also expect from the justice of that tribunal to which the Petitions are addressed, that the voice of faction or of ignorance shall not be taken for the voice of truth, that strict inquiry and investigation shall precede any decision on the pretended grievances of these Petitions; and that those who are themselves not only the fabricators of the false charges against the Provincial Government, but the principal authors of the real evils of which the Province has to complain, shall not be received as unexceptionable witnesses in their own unrighteous cause. All that the Government can ask,—all that its warmest well wishers can desire, is a *FULL* and impartial hearing,—a fair field and no favor;—and God defend the right.

The other branch of this concluding supplication, that the Petitioners may be maintained in the full enjoyment of the constitution of 1791,—will also meet the cordial concurrence of the friends of Government—but in a more extended sense. They, too, ask, that not only the Petitioners, but all classes of His Majesty’s subjects in this Province may enjoy the *full benefit* of that constitution, *according to its original design*, and not according to the partial views of a faction. They cannot therefore join the Petitioners in their prayer that the constitution may at all times and under all circumstances remain “with-
 out any alteration whatsoever.”

If there be, as there incontestably is, a large and rapidly increasing portion of the population of the Province who are deeply imbued with English sentiments and feelings, and who (be it called prejudice or judicious preference) are attached to English laws and institutions, but who have long found themselves debarred from the full enjoyment of these advantages, and practically shut out of the pale of the constitution, by the preponderance of an adverse party in the Assembly; if they see, as they certainly do, that that party are misapplying in this respect the powers of the constitution, and perverting it to purposes which it was not intended to serve, to the avowed discouragement* of English enterprize and interests in the Colony, to the total exclusion of English laws and improvements, and to the embarrassment of Government, in order to get the power of the state into their hands, to that portion of the population an alteration of the Constitution must appear to hold out the only reasonable hope they can entertain of an improvement in their political condition. They seek not to deprive their fellow subjects who are of a different way of thinking, of an advantage they justly possess—they seek not the total subversion of *other* Laws or Institutions:—They ask no more than was promised to and intended for them;—nor more than they are ready on their parts to concede—*Hanc veniam petimus damusque vicissim*. The very nature of the matter in controversy forbids them to hope for any improvement except by a change of some of the powers of the existing Constitution, and it equally forbids the hope of such change being made except by the Supreme Legislature:—a submission of the question to the good pleasure of the predominant party who are complained of as the perpetrators of the injustice, would be trifling with the hopes and wishes of the party aggrieved. It has, indeed, been said that such a reference of the question is the only just and constitutional mode of disposing of it; that the public opinion of the Colony as expressed by a majority of its inhabitants, told by the head, is the rule which should govern both the Government here and at home, and the Imperial Legislature;—since the power of any Government can only be sustained as far as it is supported by public opinion. This doctrine and the maxim on which it rests may be admitted without any danger, wherever the true spi-

* It is a well known fact that one of the arguments publicly urged in the Assembly against a Register Bill, in 1826, was that by making titles more secure it would facilitate the introduction of English capital and enterprize, so that the peasantry would at last be bought out of their farms.

rit of the British Constitution prevails in its full extent and genuine effect :—But in this Province it is scarcely a paradox to maintain that such a *public opinion* as is here spoken of,—an enlightened public opinion, formed with knowledge and consideration, has no existence among the mass of the people.—Public opinion, such as these Petitions profess to express, is any thing and every thing which a small number of active agitators may chuse to instil into the minds and put into the mouths of an unlettered, and credulous peasantry, who are actually too happy and contented to trouble themselves with inquiry or thought on political questions, and too uneducated and ignorant to form a correct opinion on the particular points at issue. Public opinion, so represented, means the opinion of 250 busy Notaries, as many petty Parish Merchants, a certain number of Lawyers struggling into notoriety and practice, by mingling in political contentions, and a few active individuals in principal towns ;—all these, combining in any one system of misrepresentation and circulating it with restless zeal, find no difficulty in raising an outcry which they call the voice of the people, and persuade the open-eared multitude to join in it only by telling them that it is necessary, in order to secure them in the enjoyment of their farms, their purses, or their religion. This is no exaggerated representation of the manner in which public opinion (or what is so called) is formed and expressed in Lower-Canada. To such public opinion the better-informed and thinking portion of the community, however small their comparative numbers, never can bow without at least an endeavour to redress its evil consequences by appealing to that Supreme Power from which the Constitution was derived, and which has the undeniable authority, to alter it in such a manner that its present perverted operation may be corrected, and its future influence on the destinies of the Colony rendered more conformable to the wise and beneficent views in which it was originally devised.

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